



MEDICAL NEGLIGENCE IN INDIA: BALANCING PATIENTS' RIGHTS, LEGAL ACCOUNTABILITY, AND ETHICAL HEALTHCARE

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INTRODUCTION

Medical negligence is growing vital in India, where the healthcare system is challenging day by day increasing patient loads, insufficient infrastructure, and varying quality of medical practices. The legal framework governing medical negligence primarily shaped the consumer protection laws, tort laws and judicial precedents. The Consumer Protection Act of 2019, which replaced the Consumer Protection Act of 1986, plays a crucial role in holding medical professionals accountable by allowing patients to seek legal recourse before consumer forums. Additionally, the landmark judgments of Supreme Court cases have shaped the interpretation of negligence in medical practice, defining it.

OBJECTIVES

1. To understand the scope and nature of medical negligence in India
2. To analyse the legal framework governing medical negligence in India
3. To evaluate the role of landmark judgments in shaping medical negligence jurisprudence
4. To compare Indian legal standards with international practices on medical negligence
5. To propose reforms and recommend a balanced legal approach

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HYPOTHESIS

1. Increased Awareness of Medical Negligence Laws Improves Patient Protection- When patients are aware of their legal rights under the Consumer Protection Act and tort laws, they are more inclined to seek legal redress in cases of medical negligence.
2. Stronger Legal Frameworks Reduce Medical Negligence Claims - Stricter laws and accountability mechanisms, such as the Bharatiya Nyaya Sanhita 2024, can lead to fewer medical negligence claims
3. Medical Negligence Litigation Impacts Healthcare Costs and Practices - Increased medical litigation may lead to defensive medicine, in which doctors prescribe needless tests and treatments to avoid legal ramifications, hence increasing healthcare expenses.
4. ADR Mechanism Implementation Can Lessen the Court's Burden. Mediation and arbitration are two examples of alternative dispute resolution (ADR) techniques that can effectively settle medical negligence cases, lightening the caseload on conventional courts.
5. To protect both patients and medical professionals, a balanced approach is required. By making a distinction between actual negligence and the problems that come with medical procedures, rules should protect patient rights while also preventing needless harassment of healthcare professionals.

DEFINITION

The word negligence means failure to care enough, where there is no intention of causing harm to the person. In legal terms, Negligence is a law of tort that breaches the legal duty to protect, which causes damages to the plaintiff. Medical negligence is the failure or improper medical treatment of a patient caused by healthcare practitioners.

The negligence also covers doctors, nurses, surgeons, pharmacists, physicians and medical practitioners. Medical negligence occurs by an Act or an Omission. When the healthcare professional fails to do something that has to be done or neglects it is an omission, or if the practitioner does something that causes harm to the patient called an Act. Both forms can lead to legal liability if they result in harm to the patient.

EVOLUTION OF MEDICAL NEGLIGENCE LAWS IN INDIA

The medical negligence has evolved over millennia, addressed by legal, ethical, and societal developments. One of the earliest legal codes addresses medical malpractice. It gives more penalties to physicians. The code of Hammurabi states that if any physician causes death, the patient code prescribed the amputation of physician's hands. The concept of medical negligence was introduced and expanded to continental Europe around 1200 CE. It was recognised by Roman law that medical malpractice is legally wrong. Medieval age development. It started with English common law, from its medieval origins, which provides an unbreakable line of medical malpractice decisions, all the way to the modern era.

LEGAL FRAMEWORK: INDIA VS OTHER COUNTRIES

Medical laws could differ across jurisdictions, addressed by legal traditions, healthcare systems, and journal interpretations. India follows certain laws governing medical negligence, like consumer protection laws, tort laws, and other regulations, while many international legal systems, such as the UK, USA, and Australia, adopt more specialised medical laws.

Under Indian law, the court follows the Bolam test, which states that a doctor is not negligent if their actions conform to a reasonable standard accepted by a responsible body of medical professionals. This test has been applied in landmark cases such as *Jacob Mathew v. State of Punjab* (2005) 6 SCC 1¹, which differentiated between civil and criminal negligence.

In the United States, medical negligence is governed under state-specific medical malpractice laws, and it is not a single national law; it includes

- Tort-based compensation system
- Medical Malpractice Review Board;

Res ipsa loquitur doctrine. In the United Kingdom, it is governed by common law principles and the national health service compensation system, which includes

- Duty to care under common law
- Nhs litigation authority

¹*Jacob Mathew v. State of Punjab*, (2005) 6 S.C.C. 1 (India).

No fault compensation system. Australia follows a state-based legal system with civil liability laws governing medical negligence. The Civil Act, which differs from state and additionally encourages ADR before litigations. Recent Developments and Reforms in Medical Negligence Laws:

1. National Convention on Medicine & Law 2024 discussed the need for alternative dispute resolution mechanisms in medical negligence cases
2. Bharatiya Nyaya Sanhita (BNS) 2024 introduced harsher penalties for medical negligence, replacing provisions in the IPC.
3. The Supreme Court of India awarded the highest-ever compensation in a medical negligence case.
4. The National Medical Commission (NMC) replaced the Medical Council of India (MCI) to improve transparency in medical regulation. Role of the Consumer Protection Act:

- The Consumer Protection Act plays a vital role in medical negligence. It gives a legal shield to the victims to seek justice against deficient medical services.
- CPA gives legal rights to the victims.
- It encourages hospitals, medical professionals and others to maintain better standards of care to avoid the liabilities and fear of litigation.
- Under CPA, Consumer Disputes Redressal Agencies at the district, State, and national levels have been established to label complaints that are related to medical negligence and these forums effectively seek compensation for the victims compared to traditional civil courts.
- Ensures proper medical records and documentation to avoid negligence.
- Reduces careless treatments and wrong diagnoses.
- We need to expect medical opinions in courts to avoid unfair penalties on doctors.
- CPA significantly impacted the landscape of medical negligence in India, which empowers patients to seek redressal for their default services
- CPA emphasises a balance between the rights of the patients and preventing undue harassment of medical professionals.

TYPES OF MEDICAL NEGLIGENCE

Misdiagnosis happens when a medical professional fails to correctly diagnose a patient's condition. Sometimes it may cause wrong treatment, slow treatment, or no treatment and lead to infection or more.

Example: A tuberculosis patient is diagnosed with bronchitis when the treatment leads to critical complications

Surgical negligence. Mistakes occur during the process of surgery, which can lead to further complications or harm to the patients.

Anaesthesia Errors in giving anaesthesia, which can be severe and dangerous, like too much or too little anaesthesia administration.

Prescription and medical errors: Fault in prescribing, dispensing, or wrong medication, incorrect dosage or overdose that harms the patient's condition

Long-term negligent treatment. Continued errors or failure to give proper medical care over a period may worsen the patient's condition.

Pregnancy and birth injuries: Errors during pregnancy, labour time or delivery.

Example: Dental negligence: Fault in dental procedures that may lead to injury or severe damage.

Negligent cosmetic care and mistakes in plastic surgery result in infections and critical complications.

EFFECTS ON PATIENTS, HEALTHCARE SYSTEM AND PROFESSIONALS IN INDIA

1) Effects on patients:

Harms both physically and psychologically -

- Any small medical negligence leads to severe damages to the patient, like injuries, disabilities or even death.
- Sometimes it can also result in long-term health complications.

- Psychological effects include anxiety, PTSD and loss of trust.

Financial Burden –

- In case any medical negligence occurs, the patient could undergo financial burden due to the medical expenses incurred by the negligence.
- Families suffer economic hardship if the victim is the sole breadwinner.

2) Effects On The Healthcare System:

a) Rise in Defensive Medicine

- Doctors order unnecessary tests and procedures to avoid legal risks, increasing healthcare costs.

- More reliance on second opinions and overcautious treatments rather than patient-centred care.

b) Increase in Medical Litigation

- Surge in lawsuits against hospitals and doctors.
- Courts face overburdened dockets, delaying justice for genuine negligence victims.

3) Effects On Healthcare Professionals:

a) Loss of reputation of the healthcare professionals:

- If any disputes or medical negligence arise in the healthcare institutions, the doctors and medical providers may lose the public trust and credibility.

- The negative comments and media coverage may damage the whole professional career. Exceptions that are not considered medical negligence, Factors of affection recovery (non-medical)

- It's the responsibility of the doctor to provide medical care, but it's the patient's lifestyle and choices to maintain their health accordingly.

- Example: If the patient has diabetes and undergoes surgery but does not follow dietary restrictions leading to health complications, when the doctor gave clear instructions but the patient failed to do so, the doctor cannot be liable. Insufficiency of resources in government hospitals

- In certain areas especially rural or unfunded areas the medical providers have limited supplies and infrastructure they try to give the best circumstances, if the doctor has done their best under the given circumstances still it is constrained by a lack of resources they are not under their control and it is not considered as medical negligence.
- For example, a patient in a rural area needs specialist treatment, but the resources aren't enough; in that case, the hospital is not liable. Consent-based high-risk surgeries
- When the patient undergoes a high-risk surgery with a highly skilled doctor, even after informed consent, if it fails, they cannot claim negligence
- For example, if the doctor is informed about the risk involved in surgery and has consent from the patient, the doctor won't be liable. Adverse reaction to properly administered treatment:
- Certain medical processes, treatments and medications contain high risk when performed; it has to be performed according to the guidance. In those cases, it is not considered medical negligence if the medical institution followed all such protocols, informed consent and followed necessary precautions.
- Example: If the doctor administered anaesthesia for a surgery, checking the patient thoroughly and knowing the patient's medical history, despite the patient experiencing a rare allergy, it would come under medical negligence. Laws for Medical Negligence:

IN INDIA, MEDICAL NEGLIGENCE DEALS WITH VARIOUS LEGAL PROVISIONS

1. Consumer Protection Act (CPA) 2019 :

- Sec 2(11) deals with the Definition of 'deficiency in services' as any fault, imperfection, shortcoming, or inadequacy in the quality of services.
- Section 2(24) Definition of service. This section also includes healthcare and medical services
- Rights of the patients as consumers
- Section 17 Consumer Disputes Redressal Commission (CDRCs) and their jurisdiction:
- Section 83 Product liability (defective medical equipment and drugs)
- Section 90 penalties for false or misleading advertisements
- Indian Medical Council (Professional Conduct, Etiquette and Ethics) regulation, 2002

- Regulation 1.1 – Duty of a Medical Practitioner
- Regulation 1.2.1 – Responsibility Towards Patients
- Regulation 1.4.2 – Standard Treatment and Competence
- Regulation 2.1 – Negligence and Professional Misconduct
- Regulation 3.7 – Misleading Advertisement
- Regulation 7.7 – Financial and Commercial Misconduct
- Regulation 8.2 – Disciplinary Actions for Negligence

2) Bharatha Nyaya Sanhita :

- Section 18 states that nothing is an offence if it's done accidentally without criminal intention and with proper care and caution.
- Section 19 states that nothing is an offence, even with the knowledge that it is likely to cause harm if done without criminal intention and in good faith to prevent or avoid other harm to the person.
- Section 26 stipulates that an act is not considered an offence if it is not intended to cause death, is done in good faith, and is carried out with the consent of the individual.
- Section 30, an action is not considered an offence if it is not intended to cause death, is done in good faith, and is carried out without the consent of the individual, provided that the person is incapable of giving consent.
- Section 106 controversy: Imprisonment with or without a fine

3) Law of Torts: Certain conditions should be proven to be established under the law of torts

1) Principal negligence

- Duty to care: The healthcare provider or the institution owes a duty of care to a patient
- Breach of duty: When the medical professional fails to care
- Injuria or damages to the patients. If the victim suffers physical, mental, or financial harm due to the negligence of the doctor, He is liable to pay compensation or more

2) Res Ipsa Loquitur(the thing speaks for itself)

This principle applies when negligence is obvious, so it does not need any further proof.

- Vicarious liability in medical negligence.

- **Compensation and Remedies in Tort Law.** Under tort law, patients can claim monetary compensation for their damages

Other relevant laws:

- **Drugs and Cosmetics Act 1940**

1. Section 18 – Prohibition of Manufacture and Sale of Substandard Drugs
2. Section 27 – Penalties for Adulterated or Spurious Drugs
3. Section 27A – Penalty for Misbranded Drugs
4. Section 10 – Import of Spurious Drugs
5. Section 16 – Standards for Quality Control
6. Section 17B – Spurious Cosmetics
7. Section 26A – Power to Ban Harmful Drugs

- Clinical establishment (Registration and Regulation Act 2010)

- Medical Council of India (MCI) code of ethics. Liability for Medical Negligence in India. Medical negligence in India can address civil liability, consumer protection liability, and disciplinary action against healthcare professionals.

1) Civil Liability

- Victims can file a case in civil courts to claim compensation for damages caused by medical negligence
- Compensation may include medical expenses, loss of income, pain and suffering

2) Consumer Protection Liability

- The Consumer Protection Act, 2019, considers medical services as a part of “service” under its provisions.
- Patients can file complaints in consumer forums for deficient medical services.
- Liability under Consumer Protection Laws:
- District Commission: For claims up to ₹50 lakhs.
- State Commission: For claims between ₹50 lakhs to ₹2 crores.

- National Commission: For claims above ₹2 crores. 3) Disciplinary Action Under Medical Council Regulations

The Medical Council of India (MCI) or State Medical Councils can take disciplinary action for negligence. Punishments include:

- Warning or reprimand.
- Temporary suspension of license.
- Permanent revocation of license in severe cases.

LANDMARK CASES FOR MEDICAL NEGLIGENCE

Kunal Saha Vs. AMRI (Advanced Medical Research Institute) ²

In this landmark case, Dr. Kunal Saha filed a complaint against AMRI Hospital and associated doctors, alleging medical negligence leading to the death of his wife, Anuradha Saha, due to improper treatment of Toxic Epidermal Necrolysis (TEN). The Supreme Court of India, in October 2013, held the hospital and doctors liable for medical negligence and awarded a compensation of over ₹11 crore to Dr. Saha, marking one of the highest compensations in Indian medical negligence cases.

S. Neha Kumari, D/O Shri Amar Kumar ... vs Apollo Hospitals, Dr R. Gopal ... on 27 November 2002³

In the case of Neha Kumari vs. Apollo Hospitals and Dr. R. Gopal, the plaintiff, Neha Kumari, alleged medical negligence against Apollo Hospitals and Dr. R. Gopal. She claimed that the defendants failed to provide appropriate medical care, leading to complications in her health. The defendants contended that Neha Kumari had complex birth defects of the spine and body, as evidenced by pre-operative CT scans, and that they had provided appropriate medical care. The court examined the evidence presented by both parties, including medical records and expert testimonies. After thorough consideration, the court concluded that the defendants had exercised due diligence and adhered to the standard medical protocols in treating Neha

² *Kunal Saha v. AMRI Hospital*, (2013) 14 S.C.C. 384 (India).

³ *Ms. Neha Kumari & Anr. v. Apollo Hospitals & Ors.*, (2003) 1 CPJ 145 (NC) (India).

Kumari's condition. Consequently, the court dismissed the allegations of medical negligence against Apollo Hospitals.

Dr. R. Gopal. Jacob Mathew vs State Of Punjab & Anr on 5 August, 2⁴

This case addressed the criminal liability of doctors in instances of alleged medical negligence. The Supreme Court emphasised the need to protect medical professionals from frivolous or unjust prosecutions. It ruled that for a doctor to be held criminally liable under Section 304A of the Indian Penal Code (causing death by negligence), the negligence must be gross or of a very high degree. The Court acquitted Dr. Jacob Mathew, noting that mere lack of proper care or precaution does not constitute criminal negligence.

Bolam v. Friern Hospital Management Committee (2005)⁵

This English case established the "Bolam Test," which became a standard for assessing medical negligence. According to this test, a doctor is not negligent if they act by a practice accepted as proper by a responsible body of medical professionals skilled in that particular art. This test has been widely adopted in various jurisdictions, including India, to evaluate the standard of care in medical negligence cases.

Kusum Sharma v. Batra Hospital and Medical Research (2010)⁶

In this case, the Supreme Court laid down guidelines to determine medical negligence. The Court emphasised that a doctor cannot be held negligent merely because something went wrong. To establish negligence, it must be proven that the doctor did not possess the requisite skill or failed to exercise it with reasonable competence. The judgment reinforced the "Bolam Test," which assesses the standard of care expected from a medical professional.

The State of Punjab vs Rakesh Kumar on 3 December, 2018⁷

In the case of The State of Punjab vs. Rakesh Kumar, decided on December 3, 2018, the Supreme Court of India addressed the applicability of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS Act) about offences involving manufactured drugs. The respondents had been convicted under Sections 21 and 22 of the NDPS Act for possession of

⁴ *Jacob Mathew v. State of Punjab*, (2005) 6 S.C.C. 1 (India).

⁵ *Bolam v. Friern Hospital Mgmt. Comm.*, [1957] 1 W.L.R. 582 (Q.B.) (U.K.).

⁶ *Kusum Sharma v. Batra Hosp. & Med. Research Ctr.*, (2010) 3 S.C.C. 480 (India).

⁷ *State of Punjab v. Rakesh Kumar*, (2019) 2 S.C.C. 466 (India).

significant quantities of manufactured drugs containing narcotic and psychotropic substances. The Punjab and Haryana High Court had suspended their sentences, reasoning that such offences should be prosecuted under the Drugs and Cosmetics Act, 1940, rather than the NDPS Act. The Supreme Court overturned this decision, emphasising that the NDPS Act and the Drugs and Cosmetics Act operate concurrently. The Court clarified that the NDPS Act's provisions are not in derogation of the Drugs and Cosmetics Act; instead, both statutes can apply simultaneously. The Court further noted that it is within the state's prerogative to prosecute offenders under the appropriate law, and offences involving narcotic drugs and psychotropic substances can be addressed under the NDPS Act, even if they involve manufactured drugs. This judgment reinforced the stringent regulatory framework of the NDPS Act concerning narcotic drugs and psychotropic substances, underscoring that violations involving such substances, irrespective of their form, fall within its ambit. Consequently, the Supreme Court directed that the respondents' sentences should not have been suspended and ordered their custody to be reinstated.

CONCLUSION

Medical negligence is a critical issue in India despite skilled medical advancement, as it still tends to affect the patients, healthcare and professionals. The legal system protects them as a shield, and while doctors and medical institutions are expected to uphold a high standard of care, errors and lapses in judgment can sometimes lead to severe consequences for patients. The Consumer Protection Act 2019, along with other tort law principles, provides a framework for addressing medical negligence claims, ensuring that victims have access to legal remedies and compensation.